

Sheila Hurley
Name
Po Box 25071
Albuquerque NM 87125
Address

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

2020 AUG 24 PM 3:54

CLERK-ALBUQUERQUE *lmz*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Sheila Hurley, Plaintiff
(Full Name)

CASE NO. 20-cv-850 GBW
(To be supplied by the Clerk)

v.
Stephanie A. Fuchs, Jeffrey S. Smith,
Jennifer Fellbaum, Andrew Saul, Commissioner
of SSA, and the Social Security Administration,
Defendant(s)

CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. §1983

A. JURISDICTION

1) Sheila Hurley, is a citizen of New Mexico
(Plaintiff) (State)
who presently resides at Po Box 25071, Albuquerque, NM
(Mailing address or place of confinement)
87125

2) Defendant Stephanie A. Fuchs is a citizen of
(Name of first defendant)
Albuquerque, NM, and is employed as
(City, State)
group Supervisor of SSA Albuquerque OHO. At the time the claim(s)
(Position and title, if any)

alleged in this complaint arose, was this defendant acting under color of state law?

Yes ☒ No ☐

If your answer is "Yes", briefly explain: She was a federal
employee, however she is liable in her individual as well as official
capacity because her actions exceeded her authority and were in non-compliance
with policy in some instances.

3) Defendant Jeffrey Smith is a citizen of
(Name of second defendant)
Tijeras, NM, and is employed as
(City, State)
Hearing Office Director of SSA At the time the claim(s)
(Position and title, if any) 0810

alleged in this complaint arose, was this defendant acting under color of state.

Yes ☒ No ☐ If your answer is "Yes", briefly explain: He is a federal employee of SSA.

(Use the back of this page to furnish the above information for additional defendants.)

- 4) Jurisdiction is invoked pursuant to 28 U.S.C. §1343(3), 42 U.S.C. §1983. (If you wish to assert Jurisdiction under different or additional statutes, you may list them below.)

B. NATURE OF THE CASE

- 1) Briefly state the background of your case.

I was an excellent employee of SSA, with excellent reviews, between 8/6/17 and 4/19/19. The Defendants violated my rights under the FLSA, and NM wage and hour laws by ~~the~~ instructing me to work through lunch hours and by failing to pay me for those hours, throughout my employment from August 6, 2017 through April 19, 2019. This was willful. It was also known throughout the agency and by the Defendants that I and many others worked through lunch and other hours off the clock, without pay.

Further, the Defendants failed to honor a reasonable accommodation to work after a day shift with a disability, in violation of the ADA and FMLA. Instead, they used my need for the accommodation to take adverse action against me.

The Defendants discriminated against me in violation of the ADA, by failing to accommodate my hand osteoarthritis and retaliated against me - for complaining about adverse work assignments, by taking adverse action and increasing my workload.

XE-

2/7

C. CAUSE OF ACTION

- 1) I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary, you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.

A)(1) Count I: FLSA

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

Stephanie Fuchs, my supervisor, told me to work through lunch to increase productivity. She did this twice, once as my mentor and she acknowledged that I worked through lunch and implied I should continue, as my supervisor. However she insisted I indicate on time reporting that I was taking lunch.

All defendants failed to investigate my complaint & instead took adverse action. I have never been paid.

B)(1) Count II: ADA

Stephanie Fuchs
a) did not accommodate my hand/wrist osteoarthritis. Instead retaliated by increasing my workload.
b) All defendants failed to have a reasonable accommodation I needed to care for a daughter with a disability. Instead retaliated and took adverse action for working to use the accommodation.

(2) Supporting Facts:

C)(1) Count III: FMLA

(2) Supporting Facts: I was granted a reasonable accommodation to look after a daughter with a disability. Stephanie Tichis failed to honor it, and instead took adverse action when I used the time to care for daughter. All defendants failed to adequately investigate and retaliated by continuing with adverse action.

D) PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?

Yes ☐ No ☒ If your answer is "YES", describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit.

Plaintiffs: _____

Defendants: _____

b) Name of court and docket number:

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

d) Issues raised: _____

e) Approximate date of filing lawsuit: _____

f) Approximate date of disposition: _____

- 2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes ☒ No ☐ If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No," briefly explain why administrative relief was not sought.

I exhausted administrative remedies by following the steps I was told to take by the Social Security Administration's EEO complaint office. I was emailed a notice of right to sue by SSA, my former employer, on ~~5~~ 5/26/20, which I received on or about 5/27/20. Pursuant to the Final Aging Denial, I had 90 days to file in district court, so this complaint is timely.

E. REQUEST FOR RELIEF

- 1) I believe that I am entitled to the following relief:

All monies not paid, plus all penalties and fees for the Defendants' willful violation.

Back pay, front pay and compensatory damages for Defendants' violation of the aforesaid statutes.

Signature of Attorney (if any)

 8-24-20

Signature of Petitioner

Attorney's full address and telephone number.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1746. 18 U.S.C. Sec. 1621.

Executed at U.S. District Ct of N.M. on Aug 24 2020
(Location) (Date)


(Signature)